



2240-1-001D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Bradley Michael John Stringer EXAMINER : M.M. Schmidt

SERIAL NO. : 09/837,561 ART UNIT : 1635

FILED : April 18, 2001

FOR : HUMAN CELL-LINES

#7/K.T.  
2/12  
ELECTION

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Betty Schultz  
(Name of Depositor)

Betty Schultz 1/27/03  
(Signature and Date)

RESPONSE TO ELECTION OF SPECIES  
UNDER 35 U.S.C. §121

ASSISTANT COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

Dear Sir:

This is in response to a Requirement for Election of Species mailed September 25, 2002, requiring Applicant to elect a single species from (1) different types of immortalising agents and (2) different types of precursor cells for further prosecution.

In accordance with 35 U.S.C. §121, Applicant hereby elects to prosecute the species with respect to category (1), wherein the immortalising agent is an immortalising gene, and with respect to category (2), wherein the precursor cell is an undifferentiated cell.

While applicant has made the above election and does not traverse the requirement, applicant does wish to object to the format and content thereof. Specifically, the requirement

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as set forth is incomplete and applicant cannot determine the nature of the distinctions set forth by the examiner so that a complete and reasoned response can be presented. To this extent the election provided above is presented on applicant's best understanding of the bases for separation of the claims. No classification is given and certain of the species alluded to by the Examiner would be clearly combinable with each other if the species and presumed scope of each species could be confirmed.


Specifically, the immortalising genes of category (1) could include a viral oncogene, a construct, a retroviral construct, and an SV40 T antigen. The possibility that these various immortalising genes could be subsumed within the claims presumed to be the subject of separately classifiable inventions (i.e., species) illustrates the lack of clarity of the present requirement, and the consequent inability of the applicant to make a meaningful election. On this basis, applicant requests that the examiner reconsider and withdraw the present requirement and if appropriate, issue a further requirement so that applicant will have the ability to make a proper decision for the further prosecution of the claimed subject matter of the present invention. For this reason, Applicant requests reconsideration and revision of the Requirement for Election of a species.

With regard to the different types of precursor cells, the undifferentiated cells of category (2) could be construed to encompass a precursor cell and an immature cell. The possibility that these various undifferentiated cells could be subsumed within the claims presumed to be the subject of separately classifiable inventions (i.e., species) illustrates the lack of clarity of the present requirement, and the consequent inability of the applicant to make a meaningful election. On this basis, applicant requests that the examiner reconsider and

withdraw the present requirement and if appropriate, issue a further requirement so that applicant will have the ability to make a proper decision for the further prosecution of the claimed subject matter of the present invention. For this reason, Applicant requests reconsideration and revision of the Requirement for Election of a species.

Further and favorable action on this request is courteously solicited.

Respectfully submitted,



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